

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: :
 : Case No. 15-11172-mew
SILVER REALTY EQUITIES, LLC. :
 :
Debtor. : Chapter 7
 :
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CHAPTER 7 TRUSTEE'S MOTION TO DISMISS BANKRUPTCY CASE

TO: THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE

Ian J. Gazes, as the chapter 7 trustee (the "Trustee") of the estate of Silver Realty Equities, LLC (the "Debtor), by and through his undersigned attorneys, hereby submits this motion (the "Motion") for an order dismissing the Debtor's bankruptcy case, and respectfully states as follows.

INTRODUCTION

1. The Trustee seeks the immediate dismissal of the instant bankruptcy case on the basis that the Debtor did not file its petition in good faith. The Debtor has not filed any of the required schedules and has not provided the Trustee with any books and records. Because the Debtor has sought the protections afforded by the Bankruptcy Code with no intention of fulfilling the concomitant responsibilities of a debtor in bankruptcy, the Trustee respectfully submits that this case be dismissed.

JURISDICTION, VENUE AND STATUTORY PREDICATES FOR RELIEF

1. This Court has jurisdiction over this matter under sections 157(a), (b)(1) and 1334(b) of title 28 of the United States Code, 28 U.S.C. §§ 157(a), (b)(1), and 1334(b), and the Amended Standing Order of Reference of the United States District Court for the Southern District of New York. Consideration of this Motion is a core proceeding under section 157(b)(2)(A) of title 28 of the United States Code. 28 U.S.C. §§ 157(b)(2)(A).

2. Venue of this case in this district is proper under section 1408 of title 28 of the United States Code. 28 U.S.C. § 1408.

3. The statutory and other provisions governing the relief requested in this Motion are sections 105(a), 521(a), and 707(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), 11 U.S.C. §§ 105(a), 521(a), and 707(a).

BACKGROUND

4. On May 5, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code.

5. Thereafter, the United States Trustee appointed the Trustee to serve as interim trustee in this case pursuant to section 701 of the Bankruptcy Code. The Trustee has duly qualified and now serves as the permanent trustee. 11 U.S.C. §702(d).

6. On May 5, 2015, the Clerk of the Court noted that the Debtor had failed to file any of the required schedules and set May 19, 2015 as the deadline to remedy the Debtor’s incomplete filings.

7. To date, the Debtor has neither remedied any of its incomplete filings nor sought an extension of time to do so beyond the May 19th deadline set by the Court.

8. To date, the Debtor has not turned-over to the Trustee any of its books and records even though requested to do so by the Trustee.

ARGUMENT

9. Bankruptcy Code § 707(a) provides:

The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including-

(1) unreasonable delay by the debtor that is prejudicial to creditors;

Dismissal for cause is not limited, however, to the above three examples which are illustrative but not exhaustive. See Moses, 792 F. Supp. at 530; see also In re Zick, 931 F.2d 1124, 1126 (6th Cir. 1991); H.R.Rep. No. 95-595, 95th Cong., 1st Sess. 380 (1977); S.Rep. No. 95-989, 95th Cong., 2d Sess. 94 (1978).

10. A Chapter 7 case may be dismissed pursuant to Bankruptcy Code § 707(a) based upon a Trustee's inability to administer the estate as a result of the Debtors' failure or refusal to cooperate with the Trustee and provide the requisite information. See In re Moses, 792 F. Supp. 529 (E.D. Mich. 1992).

11. It is clear from both statutory language and case law that a debtor must cooperate with the trustee in the administration of the estate. Bankruptcy Code § 521(3) states that the debtor shall "cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(3). FRBP, 4002(4) further provides that "[i]n addition to performing other duties prescribed by the Code and rules, the debtor shall ... cooperate with the trustee in the preparation of inventory, the examination of proofs of claim, and the administration of the estate." FRBP 4002(4). Additionally, Bankruptcy Code § 521(4) requires the debtor to "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate..."

12. Here, the Debtor has neither filed the required schedules nor turn-over its books and records to the Trustee. Without this information, the Trustee is unable to administer the Debtor's estate. Accordingly, the Trustee submits that ample cause exists to dismiss the instant case.

NOTICE

13. Movant has served a copy of the Notice of Motion and Motion upon: (a) the Office of the United States Trustee for the Southern District of New York; (b) Debtor's counsel; (c) those parties who have filed notices of appearance with requests for copies of papers, if any, and (d) upon all known creditors of the Debtor. Applicant requests that the Court so find that such notice sufficient notice of the instant Motion.

WHEREFORE, Applicant respectfully prays for entry an order, substantially in the form annexed hereto as Exhibit "A", dismissing the case and for such other further and different relief as to this court may seem just and proper.

Dated: New York, New York
September 11, 2015

GAZES LLC

/s/ Ian J. Gazes
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